DOCUMENT RESUME

ED 209 725 EA 014 148

TITLE	Reduction in Force--Layoff and Recall. Suggested Personnel Policy Guidelines for School Districts.
INSTITUTION	Oregon State Dept. of Education, Salem.
PUB DATE	Aug 81
NOTE	20p.
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Elementary Secondary Education; Employment Patterns; *Job Layoff; Long Range Planning; Personnel Policy; *Reduction in Force; *Retrenchment; Teacher Dismissal
IDENTIFIERS	Oregon

ABSTRACT

This document focuses on the issues involved when changes in school district staff size are planned and revises the 1977 document, "Reduction in Force." Because local Oregon school districts have statutory and constitutional authority to reduce force and lay off staff, they need to develop plans for such actions when procedures are not included in their collective bargaining agreements or when supplements to those agreements are needed. When planning for a necessary change in staff size, districts must still ensure that equal educational opportunities are available to all students, that equal student activities are offered for males and females, and that affirmative action procedures and state standard requirements remain intact. Additionally, procedural requirements of the Oregon Fair Dismissal Law and local collective bargaining agreements must be followed. Position descriptions are needed for each type of position to ease reassignments. In writing a plan, districts should establish clear procedures for determining that reduction is needed. Specific programs that can be eliminated should be identified along with alternatives and considerations for retained personnel. Districts must also have policies intact for recalling employees to work. Finally, the board should officially adopt the plan and disseminate it. A brief list of printed resources and organizations that can be contacted for assistance is included. (MHJ)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED209725

SUGGESTED PERSONNEL POLICY GUIDELINES FOR SCHOOL DISTRICTS

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
  Minor changes have been made to improve reproduction quality.
- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

REDUCTION IN FORCE—LAYOFF AND RECALL 1981

PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
S.J. Case

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

OREGON DEPARTMENT OF EDUCATION
700 PRINGLE PARKWAY SE
SALEM, OREGON 97310
VERNE A. DUNCAN, STATE SUPERINTENDENT
OF PUBLIC INSTRUCTION

EA 014 146

department of education

REDUCTION IN FORCE--LAYOFF AND RECALL

August 1981

Verne A. Duncan
State Superintendent of Public Instruction

Oregon Department of Education
700 Pringle Parkway SE
Salem, Oregon 97310

Federal law prohibits discrimination on the basis of race, color or national origin (Title VI of the Civil Rights Act of 1964); sex (Title IX of the Educational Amendments of 1972 and Title II of the Vocational Education Amendments of 1976); or handicap (Section 504 of the Rehabilitation Act of 1973) in educational programs and activities which receive federal assistance. Oregon laws prohibiting discrimination include ORS 659.150 and 659.030. The State Board of Education, furthermore, has adopted Oregon Administrative Rules regarding equal opportunity and nondiscrimination: OARs 581-21-045 through -049 and OAR 581-22-205.

It is the policy of the State Board of Education and a priority of the Oregon Department of Education to ensure equal opportunity in all educational programs and activities and in employment. The Department provides assistance as needed throughout the state's educational system concerning issues of equal opportunity, and has designated the following as responsible for coordinating the Department's efforts:

Title II--Vocational Education Equal Opportunity Specialist

Title VI and Title IX--Equal Education and Legal Specialist

Section 504--Assistant Superintendent, Special Education and Student Services Division

Inquiries may be addressed to the Oregon Department of Education, 700 Pringle Parkway SE, Salem 97310 or to the Regional Office for Civil Rights, Region X, 1321 Second Avenue, Seattle 98101.

3601519812000

FOREWORD

Education aims to offer the best programs possible; to do so, personnel need clear guidelines as to what to expect in the affairs of management.

The passage of time brings changes to the operation and management of any agency. One of the recent changes involves the procedures to follow when a district is faced with a reduction in force, as well as procedures for laying off employees and recalling employees who have been layed off.

Reduction in Force--Layoff and Recall is one in a series of publications on personnel practices developed by the Personnel Management Advisory Committee and published by the Oregon Department of Education. It is designed to assist local school boards and administrators when planning for any change in staff size.

Special thanks to the Personnel Management Advisory Committee, especially the subcommittee, chaired by Glenn Harrison, and Department consultant George Martin who worked on this publication. For more information, contact Milt Baum, Associate Superintendent, Office of School District Services, 378-4772, Don Kipp, Director, Legal and Personnel Services, 378-8536, or toll free in Oregon 1-800-452-7813.

Verne A. Duncan
State Superintendent
of Public Instruction

PERSONNEL MANAGEMENT ADVISORY COMMITTEE
(1980-1981)

Gerry Elstun, Chair
Jack Liles, Vice-chair
Gene Allison
Elma Baker
John Brown
Francis Dummer
Dick Ellingboe
Gerald Hammann
Marleau Harris
Glenn Harrison
Mary Henderson
Jerry Martin
Henry Mascall
Bob Post
Duffy Tripp
Milt Baum
Don Kipp
George Martin

Members of the Subcommittee

Glenn Harrison, Chair
Elma Baker
Gerry Elstun
Duffy Tripp
Don Kipp
George Martin

TABLE OF CONTENTS

	Page
Foreword	i
Introduction	1
Authority	1
Definitions	1
Reduction in Force	4
Developing a Plan	5
Factors for Consideration	
Equal Educational Opportunity	5
Equal Employment Opportunity	6
Student Activities	6
State Standards	6
Position Descriptions	6
Fair Dismissal Law	6
Collective Bargaining Agreements	7
Details of the Plan	
Determination of Needs	7
Decision as to the Position(s) Eliminated	7
Procedure for Reducing Personnel	8
Recall to Employment	10
Board Adoption and Dissemination of the Plan	12
Recources	
Printed Material	13
Contacts	13

INTRODUCTION

This publication focuses on issues involved when a district must lay off, recall, or reduce the number of employees, certificated or classified, either during or at the end of the school year. It includes suggestions for planning procedures to follow in handling each situation.

The need for reduction in force (RIF) or layoff and recall could face any school district in Oregon. A plan should be developed in a nonemotional setting and before any crisis occurs. Some Oregon school districts have bargained layoff and recall or reduction in force provisions in contract agreements, and some have developed plans, yet others may not have plans or provisions for dealing with these issues. New legislation requires bargaining on recall procedures.*

This publication is a revision of a 1977 PMAC document, Reduction in Force. Another 1977 PMAC publication, Forced School Closure, deals in depth with closures brought about by inclement weather or other factors.

AUTHORITY

The local school district has the authority and should consider providing for reduction in force and layoff:

- Constitution of the State of Oregon, Article XI, Section 11, provides for a six percent limitation on increases in approved taxes without a vote of the people.

- ORS 294.326 - Compliance with Local Budget Law is required prior to expenditure or tax levy; exception: "Except as provided . . . it is unlawful for any municipal corporation to expend money or to levy a tax in any year upon property subject to taxation unless the municipal corporation has complied with the provisions of ORS 294.305 to 294.529." (Local Budget Law)

- ORS 332.107 - "Each district school board may establish rules for the government of the schools and pupils consistent with the rules of the State Board of Education."

- ORS 332.535 - "All school districts shall maintain written personnel policies."

DEFINITIONS

The following definitions apply to this publication.

Administrative Rule (Oregon Administrative Rule--OAR) - an agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency; adopted by the agency's governing authority, filed with and published by the Secretary of State.

---

*NOTE This legislation was House Bill 2467 and is referred to in this publication by that number. It has been assigned chapter number 569 and will appear as an ORS section when statute revisions are completed in 1982.

Administrator - any employee, the majority of whose employed time is devoted to service as a supervisor, principal, vice principal or director of a department or the equivalent, or a superintendent, deputy superintendent, or assistant superintendent of any district, whose duties and job descriptions assigned by the district involve the implementation of policies and the coordination of planning, instruction or support services of the district, and who holds an Oregon administrative certificate if required for the position. (See "District Administrator.")

Affirmative Action - district policy and implementation procedures adopted by the Board to meet the federal and state statutes and regulations regarding the employment, promotion and retention of employees without regard to race, national origin, religion, sex, age, handicap, or marital status.

Board - one of the following, usually identified in context:

1. District school board is the board of directors of a local school or community college district.

2. Education Service District board is the board of directors of an ESD.

3. State Board of Education, or state board, is the body that establishes state rules (OAR) for the administration and operation of Oregon's public elementary and secondary schools and community colleges.

Certificated Employees - district personnel required to hold teaching certificates as provided in the position descriptions of the district.

Classified Employees - district support personnel not required to hold a teaching certificate who are so identified by the district.

Collective Bargaining - the performance of the legal obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require making of a concession.

District - a school or education service district.

District Administrator - the chief administrative officer of a local school district, usually a superintendent. Small school districts without such a certificated employee may name one to carry out the provisions of the personnel rules and regulations imposed on the district through Oregon laws. (See "Administrator.")

Equal Opportunity - policies and implementation plans for the district, adopted by the school board, through which equal employment (affirmative action) and equal educational opportunities are assured all persons without regard for race, national origin, religion, sex, age, handicap, or marital status.

Goal - statement of purpose that has been formally accepted by an organization to guide action.

Grievance - an act or condition thought to be unjust and grounds for a complaint or as defined in district bargaining agreements.

Layoff* - a process for the temporary or indefinite separation from employment of employees who retain certain seniority and other contractual protections.

Oregon Revised Statutes (ORS) - laws passed by the Oregon State Legislature, as amended at any regular or special session.

Permanent Teacher - teacher employed not less than half time who has been regularly employed by a district for a period of not less than three successive years, and who has been reelected after the completion of such three-year period for the next succeeding school year. Employment in the first probationary year shall be at least 135 consecutive days. (See 1981 HB 2512(3).)

Personnel Policies - those portions of local school district written policies which relate to personnel management established by board action.

Policy - a planned statement, adopted by the local school board, through which it states a position, intent or belief about a matter for which it has a responsibility.

Position (Job) Description - a statement by the local school district board, showing essential employee relations, roles or functions, major work duties and responsibilities and qualifications, for a particular job or class of jobs.

Probationary Teacher - any teacher employed by a district, who is not a permanent teacher.

Recall - the procedure followed by employers for the return of individuals who have been layed off.

Reduction in Force (RIF)* - a process by which a local district administration and board proceed in an orderly manner to reduce the number of employees.

*NOTE Layoff and RIF are frequently used interchangeably. In How Arbitration Works Frank and Edna Elkouri state that ". . . the term 'layoff' must be interpreted to include any suspension from employment arising out of a reduction in the work force. . . ." Robert's Dictionary of Industrial Relations defines a reduction in work force as a layoff. RIF does not intend permanency when initially implemented.

Regulation - processes designed to implement a policy statement of a governing body, adopted by that body for the direction of employees and other affected persons or groups.

Rule - processes of the district administration regarding the implementation of a board policy or regulation, which is placed in writing and disseminated to all affected and interested persons.

Teachers - all employees in the public schools who have direct responsibility for instruction including administrators, unless otherwise indicated, for whom a teaching certificate is required as a basis for employment.

Temporary Teacher - a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of unanticipated enrollment or because of the death, disability, retirement, resignation or dismissal of a permanent or probationary teacher.

REDUCTION IN FORCE

The 1973 Oregon Legislative Assembly amended the Fair Dismissal Law to provide in ORS 342.865(1)(j) the reasons for dismissal due to reduction in force. The language later was altered by HB 2467, passed during the 1981 session of the legislature.

Section (3) of the Act retains and enlarges upon the intent of the 1973 legislation, as indicated in the following pages of this document.

Nothing in this section is intended to interfere with the right of a district to discharge, remove or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

The provisions of the Fair Dismissal Law allow a reduction in force (RIF) for the following reasons:

1. Inability to levy a tax sufficient to provide funds to continue the district's educational program at its anticipated level.

2. Elimination of classes due to decreased student enrollment.

3. Reduction of courses due to an administrative decision.

It is important to note that the first major impact of this law became effective in 1976. There are questions as to meaning, use and procedures which are not yet answered. School boards and administrators are strongly advised to seek legal advice prior to making any reduction in force decision or giving any notice.

While this section of the statutes refers to permanent teachers of a school district, it is strongly suggested that district policy and procedures provide for all employees, both certificated and classified.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

DEVELOPING A PLAN

When the district does not have reduction in force or layoff and recall articles in its collective bargaining agreements, or when supplements to those agreements are needed, the district may want to consider the following:

1. The development procedure should be consistent with the manner in which other district policies are developed.

2. A suggested plan should be presented to the board on schedule, deliberated on by the board at open meeting, and acted upon at an early date.

3. The plan should provide for its review, evaluation and revision.

4. The plan, when adopted, should be disseminated widely to all staff members and to the public through the usual media channels of the district.

Care should be taken to avoid conflicts between any district plan and the bargained agreements because the collective bargaining agreements supersede any district policy not consistent with the terms of the agreements.

FACTORS FOR CONSIDERATION

Equal Educational Opportunity. There are many factors which must be considered in any plan for a reduction in personnel. Overriding all other considerations are needs of children and of the district program designed to best provide for meeting these needs.

Foremost among the factors are the rules of the State Board of Education which require the provision of equal educational opportunity. This means that the program of the district, both the formal classroom and the special activities, must provide equal opportunities for all students.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

Equal Employment Opportunity (Affirmative Action). A second major concern is the impact of equal employment opportunity. The district plan must be developed to assure that the staff is representative of the population of the county in which the district is located. Equal opportunity must be provided for employment, advancement and retention without regard to race, national origin, religion, sex, age, handicap, or marital status. These matters must be included in decisions on retention and/or dismissal when reduction in personnel is required.

Student Activities. A third factor that relates to the needs of students has to do with the employment and assignment of "coaches" for the various sports and other activities. The offerings must be equal for male and female students. This matter must be considered when reduction in personnel is considered.

State Standards. It will be important to consider the requirements of state standards for public elementary/secondary schools, as adopted by the State Board of Education. Most of the factors listed here are found in these standards, but there are also a number of additional concerns. These include program planning based on needs assessments and goal setting. The decisions of the district designed to meet these standards must be considered in employee changes.

Position Descriptions. A position description for each type and kind of position in the district, for every employee including administrators, is of great importance when making decisions on quality of individual performance and the services which must be provided to students.

The position description is basic to the implementation of the equal employment opportunity plan, to the inservice and the staff evaluation programs. For these reasons, it is also a fundamental concern when there are decisions required involving reduction in personnel.

It is also desirable to develop and follow position descriptions for the various kinds of special activity responsibilities which may be assigned staff members, including student athletics, music, art and various "club" programs.

Fair Dismissal Law. The school district shall make every reasonable effort to transfer teachers of courses scheduled for discontinuation to other positions for which they are qualified. (HB 2467 Section 3 (2))

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

Collective Bargaining Agreements. As pointed out previously, the terms of the current agreements with employees may deal with reduction in force or layoff and recall and related matters. These terms must be observed in any district plan regarding reduction in force and/or layoff and recall.

There may be other considerations for reduction in force which must be weighed at the local district level. The factors listed above represent the fundamental considerations for administrators and board members, after it is determined that a change in staff size is required.

DETAILS OF THE PLAN

Determination of Need. The first step in a layoff or reduction in force plan is to establish a clear procedure for determining the need for such action. This may be for one or more of the reasons given on page 4. To determine the need:

1. The administration should be able to document the conditions which the board must consider, with facts as to need for reduction, and alternative plans for meeting the need.

2. The board should announce that the matter is to be considered at a regular or special open meeting.

3. The board should carefully consider all the factors and the alternatives, and arrive at a decision.

4. The decision may indicate the number of positions which may be eliminated, and give general instructions to administrators as to the anticipated reduction in funds or program changes.

Decision as to the Position(s) Eliminated. The board then may proceed to a consideration of the positions and activities which may be removed from the district programs, based on the contents of the adopted plan.

1. Equal opportunity requirements should receive consideration, as provided in HB 2467, Section 3 (3)(a)(A) and (B).

2. Major consideration should be given to the required courses for high school graduation and others needed to meet state standards.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

3. The effect on class size should be considered when the board determines that a reduction in staff will occur.

4. The positions or activities subject to elimination should be announced to the staff and then to the public, along with the plans developed as outlined below.

Procedure for Reducing Personnel. The district board should instruct the administrative staff to proceed to identify specific programs and positions which may be dropped. Procedure would include:

1. Identification of the specific positions which may be dropped by school, grade, subject or department, and by special activity. The eventual decision should be based on a comparison of staff on a district-wide basis.

   a. The decisions should consider the programs and services which must be provided for the school and/or district to be standard.

   b. The decisions should consider the unique needs of students in the district and the individual schools.

   c. The decisions should include proper attention to the needs of handicapped and avoid the elements of discrimination.

2. Alternatives to layoff or reduction of employees should be identified so that current employees have options. Consideration should be given to identifying:

   a. Those who will retire and others who may be planning or willing to take early retirement.

   b. Those who may be planning or will be able to plan for sabbatical or other leaves during the coming year, due to layoff.

   c. Those who actively seek or may be encouraged to seek voluntary transfer and who otherwise may be qualified for positions which will be retained.

   d. Those who will be resigning for whatever reason.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

3. Details of the plan for deciding on those to be retained should be established.

   a. After the administrative staff has identified the programs and services and/or positions to be dropped, as well as the persons who will not return to district service the next year (for the reasons outlined above), the administrative staff should then study the alternative assignments for the remaining employees. Consideration should be given to affected staff members who may be qualified to work in positions which are retained, as follows:

      1. Determine whether teachers to be retained hold proper certification to fill the remaining positions.

      2. Determine seniority of teachers to be retained.

      3. Determine competence and merit of teachers, if necessary.*

      A school district may retain a teacher with less seniority than a teacher being released when the district has determined that the teacher being retained has more competence or merit than the teacher with more seniority who is being released.

      Administrators may retain status and seniority as a permanent teacher and voluntarily may return to teaching in a reduction in staff situation. However, an administrator who was never employed as a teacher in the district is not eligible to become a nonadministrative teacher in the district if the effect is to displace a nonadministrative permanent teacher.

   b. The remaining employees, as determined above, should be listed by positions, by special assignments, and in such other categories as necessary for the district. It may be useful to list them by categories, with indicators of other factors which may be considered. (See pages 5 and 6.)

   c. Remaining employees must be placed in positions for which they are qualified.

*"Competence" means the ability to teach a subject or grade level based on recent teaching experience or educational attainments, or both, but not based solely on being certificated to teach a subject or grade level. "Merit" means the measurement of one teacher's ability and effectiveness against the ability and effectiveness of another teacher.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

4. Notification.

   a. Those not retained must be considered as subject to the district's layoff and recall or RIF procedure, nonrenewal, or dismissal as provided by law.

   b. The requirements of law must be followed as employees are informed of employment status for the coming year.

   c. The district should have a plan that provides for a procedure for employee appeals, to include the following (HB 2467(3)(7)):

      "An appeal from a decision on reduction in staff or recall under this section shall be by writ of review to the circuit court for the county in which the headquarters of the school district is located or by a procedure mutually agreed upon by the employe representatives and the employer. If a procedure by mutual agreement is chosen, the results shall be final."

Recall to Employment. There may be occasions when an employee who has been layed off may be offered the opportunity to return to employment in the district. This may occur when a resignation, either prior to or after school starts in the fall, creates a position for which the person is qualified. It may also occur: (1) when the financial condition of the district improves, perhaps through a late vote on the district budget; (2) through a renewal of state or federal special project funds; or (3) for some other special reason that creates a vacancy.

1. The procedures for recall should be developed as provided in HB 2467(3)(6):

   "a. In consultation with its employees or, for those employes in a recognized collective bargining unit, with the exclusive bargaining representative of that unit, each school district shall establish a procedure for recalling teachers to employment in the district who have been released because of a reduction in staff.

   b. The procedure so established shall define the criteria for recall and the teacher shall have the right of recall thereunder for two years after the last date of release by the district unless waived as provided in such procedure by rejection of a specific position.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

c. A permanent teacher who is recalled shall retain the permanent status obtained before the release.

d. A probationary teacher who is recalled shall have years taught for the district counted as if the employment had been continuous for purposes of obtaining permanent status."

The provisions of the recall plan may include consideration for the following:

1. Layed off employees interested in reinstatement should keep the district informed of their interest and residence and of periods of absence, so that a speedy response may be made to an offer of re-employment.

2. The district administration should maintain an up-to-date-list of the positions and services eliminated, of the persons layed off in the priority order listed above, their certification, and of the readiness of such persons to return.

3. The district may maintain and use qualified layed off employees on the district substitute lists.

4. Layed off employees should be contacted and called back to employment according to the priority lists, by categories which were used in determining those to be released, as qualified.

5. After a designated period of time, failure by the person contacted to respond may be accepted as rejection of the offer, and the next person on the list may be approached with an offer of reemployment.

6. If and when conditions improve so that a substantial number of employees may be recalled, every effort should be made to contact all those who were layed off so that their desires may be determined and offers made for such positions and activities as they may be qualified to fill.

7. The district may wish to set a time after which the recall procedure will no longer apply.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

BOARD ADOPTION AND DISSEMINATION OF THE PLAN

The district administrative personnel, and others as appropriate, having conidered all the factors listed above then will be ready to present a proposed plan to the school board.

1. The board should carefully consider all the factors and the alternatives and adopt a plan. If an ad hoc committeee is appointed to report on such a plan, the report should be presented at this time.

2. The board should express its decision in a policy statement and implementation plan. The plan should clearly state the responsibilities of the board and the district administrator, and the rights and responsibilities of all employees.

3. The plan and procedures, as adopted, should be placed in writing and copies provided each employee of the district and to all interested members of the public.

RESOURCES

Printed Material

Personnel Management Advisory Committee Publications

- Employment Procedures (1979)
- Personnel Guidelines and Model Policies (Revised, 1978)
- Evaluation Guidelines for School Personnel (1979)
- School Employees Retirement (1976)
- Suggested Calendar of Yearly School Board Activities, 1979-1980

Contacts

- Oregon Department of Education - Don Kipp
- Oregon School Board Association - Chris Dudley
- Oregon Education Association - Ted Romoser
- Fair Dismissal Appeals Board - Milt Baum
- Teacher Standards and Practices Commission - Richard Jones
- Employment Relations Board - Ken Brown
- Local School District Personnel Officers